IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75890 of 2023

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/KS/409/2023 dated 15.05.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Imperial Fragrance & Flavours Pvt. Ltd. **: Appellant**
A I Sterling Apartment, 31, Allenby Road,
Kolkata – 700 020

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri S.P. Siddhanta, Consultant, for the Appellant

Shri S. Debnath, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75399 / 2026

DATE OF HEARING / DECISION: 18.03.2026

ORDER: [PER SHRI R. MURALIDHAR]

The appellant has imported 'Gurjon Oil' and 'Patchouli Oil' from Indonesia and has filed Bill of Entry No. 4012164 dated 11.07.2019 by claiming exemption from payment of Basic Customs Duty (BCD) in terms of Notification No. 46/2011-Cus. dated 01.06.2011 as amended by Notification No. 82/2018-Cus. dated 31.12.2018. The said Bill of Entry was assessed after examination and Out-of-Charge was granted on 19.07.2019.

2. Thereafter, during the course of audit of the unit in 2021, an objection was raised by the Audit team on ground that the appellant has paid I.G.S.T. at the rate of 12% whereas I.G.S.T. at the rate of 18% is required to be paid. The appellant made a submission that they were ready to pay the differential duty on account of I.G.S.T., but requested that they may be allowed the facility of filing a supplementary Bill of Entry so as to enable them to take the input tax credit of the differential I.G.S.T. being so paid by them. This request was not considered.

3. A Show Cause Notice came to be issued on 09.07.2021 on the ground that the classification of 'Gurjon Oil' and 'Patchouli Oil' is required to be revised whereupon the appellant would be ineligible for the concessional rate of BCD under Notification No. 46/2011-Cus. dated 01.06.2011 as amended by Notification No. 82/2018-Cus. dated 31.12.2018. The SCN also demanded the differential IGST between the 12% adopted by the appellant and 18% as per the Revenue.

4. The appellant filed a detailed reply in defence of their case.

5. However, the ld. adjudicating authority confirmed the demand of BCD of Rs.7,46,325/- + SWS of Rs.74,632.50/-, along with the demand of differential I.G.S.T.

5.1. The appellant filed an appeal before the Ld. Commissioner (Appeals), which was dismissed by him.

5.2. Being aggrieved, the appellant is before the Tribunal.

6. The Ld. Consultant appearing on behalf of the appellant submits that the Bill of Entry was assessed after examination and Out-of-Charge was granted on 19.07.2019. He takes us to Page number 58 (i.e., the Bill of Entry) to fortify this submission. He also takes us through the Bill of Entry and the connected documents thereto, which show that the certificate of origin, invoice, etc., were properly placed before the Customs authorities at the time of import. He further took us through the relevant Notification, as amended on 31.12.2018, and submitted that all the goods covered under Chapter Heading 3301, irrespective of the sub-heading, would be eligible for concessional rate of BCD. In view of these submissions, he prays that the confirmed demand of BCD of Rs.7,46,325/- along with SWS of Rs.74,632.50/- be set aside.

6.1. In respect of the differential duty demanded and confirmed under I.G.S.T., the Ld. Consultant for the appellant has submitted that the appellant was under the *bonafide* belief that they were required to pay I.G.S.T. at the rate of 12%; subsequently, on being pointed out about this issue by the Audit, they have also verified, checked and found that I.G.S.T. is payable by them at the rate of 18%. As a matter of fact, he submits that the appellant agreed to pay this amount, with a request that they may be allowed to file Supplementary Bill of Entry so that the differential I.G.S.T. could be taken as input tax credit; this request was made even before the lower authorities, which was not considered. The Ld. Consultant further submits that since the appellant himself would be eligible to take the input tax credit for the differential I.G.S.T. paid, the same results in a revenue neutral situation. He relies on various case-law wherein it has been held that if credit is available to the appellant

himself, in such cases, the demand cannot be legally sustained. On the basis of these submissions, he prays that the differential demand confirmed on account of I.G.S.T. may also be set aside.

6.2. Finally, he prays that the impugned order be set aside in toto.

7. The Ld. Authorized Representative of the Revenue submits that admittedly the appellant has filed all the documents at the time of the imports; however, subsequently, it was found that the classification adopted by the appellant in respect of the said imports was not correct. He submits that if the classification is changed, the appellant would not be eligible for the concessional rate of BCD as claimed by them. Thus, he justifies the confirmed demand on this count.

7.1. In respect of the demand made under I.G.S.T., it is contended by him that the appellant himself has admitted that they had adopted an erroneous percentage of I.G.S.T. at the time of the imports. Therefore, he justifies the confirmed demand on account of I.G.S.T.

8. Heard both sides, perused the appeal papers and the documents placed before us.

9. We have gone through the Bill of Entry in question. The relevant portions of the same are extracted below: -

ANNEXURE – I. X/C/0313[illegible]

Duplicate (Importer copy)
Indian Customs EDI System - Imports V1.5E 01
15/1 STRAND ROAD, CUSTOM HOUSE, KOLKATA - [illegible]
BILL OF ENTRY FOR HOME CONSUMPTION

Custom Stn: INCCU1 CHA AAECE3545KCH001 (EIFFEL L GISTICS PVT LTD
BE No/Dt./cc/Typ: 4012164/11072019 /N/H DOC No./D1/Office: 2033937177/19-07-2019/10
Importer Details 0296009440 PAN : AAACI5979HFT001 / Code : 0510794
IMPERIAL FRAGRANCES & FLAVOURS PRIVATE LIMITED
GANDHI BUILDING ROOM NO 10,41, [illegible]
0
: STREET
KOLKATA,WEST BENGAL 700001 Payment ethod : Transaction

IGM No 2229034/09/07/2019 13/07/2019 Port Of Loading :Jakarta
Cntry Of Orgn.: INDONESIA. Cntry Of Consgn.:
BL No : JKT[illegible]DCR1906031 H/BL No :
Date : 24/06/2019 Date :
No. Of Pkgs. : 5 PLT Gross Wt : 3270.000 KGS
Marks:IMPERIAL FRAGRANCES & FLAVOURS PVT LTD
& Nos

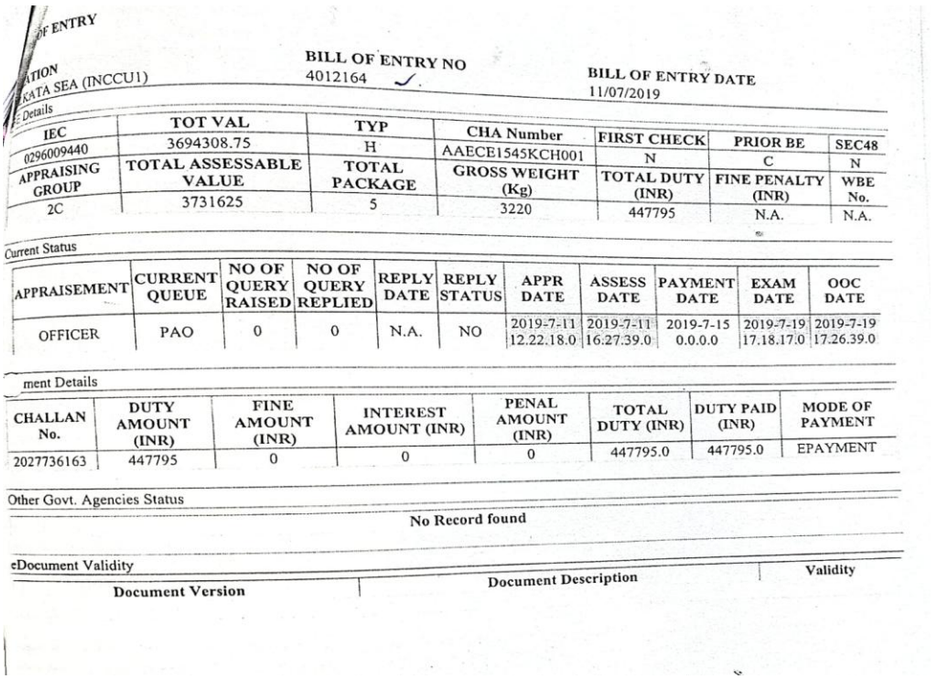
Inv No & Dt. : AAI-2019/06/CI/0 17/06/2019 PT.AROMA ATSIRI INDONESIA
Inv Val : 13390.00 USD TOI: CIF JIN RAYA TLA[illegible] NG UDIK KP.NONONOT RT
Freight : 0.00 003/16,DESA TL[illegible]JUNG UDIK INV.NO AAI
Insurance : 0.00 -2019/06/CI/0[illegible] DT.17.06.19
SVB Load(Ass): Cust. House: INDONESIA
SVB Load(Dty): HSS Load Rate: 0.00% Amount: 0.00
Misc. Charges: 0.00 0.00
Discount Rate: 0.00 Discount Amount: 0.00
0.00
Add. Duty FG Int.:
EDD : 0.00
Third Party:

Buyer Seller Reltd : No

Item Details
Exchange rate: 1 0 USD = 69.7500 INR

Slno RITC Qty Unit	Description Unit Price Ass Val	CTH CETH	C.Notn C.NSNO E.Notn E.NSNO	RSP Cus Exc	ty Rt ty Rt	Load PROV B D amt(Rs) CVD amt(Rs)
1 33019079	GURJUN OIL CRUDE(GURJUNENE TYPE)(ESSENTIAL ILDIOT					
	FOR IN FOOD USE RAW MATERIAL FOR PERFUMERY COMPOUNDS			0	0 %	[illegible]
2060.00	7.[illegible]	33019079	046/2011 307(1)	0	0 %	0.00
KGS	1011575	NOE/CIH		0	0 %	0.00
	Educational Cess on CVD			0	0 %	0.00
	Sec & Higher Edu. Cess on CVD			0	0 %	0.00
	Customs Educational Cess			0	0 %	0.00
	Customs Sec & Higher Edu. Cess			10	0 %	0.00
	Social Welfare Surcharge			12	0 %	121[illegible].00
	IGST		0[illegible]/2017 1174	0	0 %	0.00
	IGST Cess		0[illegible]/2017 56			

Declaration
1. I/We Certify that the above entries are correct.



OF ENTRY

ATION
KATA SEA (INCCU1)

BILL OF ENTRY NO
4012164 ✓

BILL OF ENTRY DATE
11/07/2019

E Details

IEC	TOT VAL	TYP	CHA Number	FIRST CHECK	PRIOR BE	SEC48
0296009440	3694308.75	H	AAECE1545KCH001	N	C	N
APPRAISING GROUP	TOTAL ASSESSABLE VALUE	TOTAL PACKAGE	GROSS WEIGHT (Kg)	TOTAL DUTY (INR)	FINE PENALTY (INR)	WBE No.
2C	3731625	5	3220	447795	N.A.	N.A.

Current Status

APPRAISEMENT	CURRENT QUEUE	NO OF QUERY RAISED	NO OF QUERY REPLIED	REPLY DATE	REPLY STATUS	APPR DATE	ASSESS DATE	PAYMENT DATE	EXAM DATE	OOC DATE
OFFICER	PAO	0	0	N.A.	NO	2019-7-11 12.22.18.0	2019-7-11 16.27.39.0	2019-7-15 0.0.0.0	2019-7-19 17.18.17.0	2019-7-19 17.26.39.0

ment Details

CHALLAN No.	DUTY AMOUNT (INR)	FINE AMOUNT (INR)	INTEREST AMOUNT (INR)	PENAL AMOUNT (INR)	TOTAL DUTY (INR)	DUTY PAID (INR)	MODE OF PAYMENT
2027736163	447795	0	0	0	447795.0	447795.0	EPAYMENT

Other Govt. Agencies Status

No Record found

eDocument Validity

Document Version	Document Description	Validity

9.1. A careful reading of the above documents, would clarify that the appellant has claimed the exemption under CTH 33019079 and have submitted all the documents, including the certificate of analysis, invoice, etc., showing the country of origin as "Indonesia".

10. It is also seen that the assessment was done on 11.07.2019, the examination thereof was taken up on 19.07.2019 and Out-of-Charge was issued on 19.07.2019. Thus, it becomes clear that the Customs had cleared the goods only after being satisfied with the classification adopted by the appellant and the documentary evidence placed by them towards the country of origin. On going through the Notifications, it is seen that the exemption towards BCD is available for CTH 3301 irrespective of the sub-heading applicable for the goods. Therefore, we do not find any merits in the confirmation of demand of BCD and SWS. Therefore, we set aside the same.

11. Coming to the differential I.G.S.T. demanded and confirmed, we find that there seems to be a genuine error on the part of the appellant in the payment of I.G.S.T. made while clearing the goods for imports. Admittedly, had they paid I.G.S.T. at the rate of 18% at the time of imports, they would have been eligible to take input tax credit. Even when the error was pointed out by the Audit, the appellants have shown their *bonafides* by volunteering to pay the same, with the request to allow them to file a Supplementary Bill of Entry so as to take the input tax credit, which was not considered at any stage. Since the taking of I.G.S.T. credit is an indefeasible right of the appellant when they use the inputs and the finished goods suffers Excise Duty / GST at the time of clearance from the appellant's factory, the Audit / G.S.T. officials should have considered the request of the appellant.

11.1. We also find that Tribunals and Courts have been consistently holding that when the differential duty / service tax accrues as CENVAT Credit to the assessee, the same results in a revenue neutral situation. Accordingly, it has been held that the confirmed demand is not legally sustainable. In this regard, we have for reference the case-law of *M/s. Chiripal Polyfilms Ltd. v. Commissioner of C.Ex. & S.T., Vadodara-I [2022 (67) G.S.T.L. 454 (Tri. – Ahmd.)],* wherein has been held as under: -

> *"5.5 Similarly, on revenue neutrality, appellant submitted that if they had paid Service Tax of Rs. 2.96 crores, it would have been available as Cenvat credit to them only and consequently they would have paid less duty from PLA when appellant has paid duty from PLA/Cash Account for the amount of Rs. 17.43 crores during the period in question.*

Government does not get any extra revenue in such a revenue neutral situation. It is settled law on revenue neutrality that there can't be wilful suppression of facts or intent to evade payment of Service Tax when whatever Service Tax if paid by appellant was available to themselves as Cenvat Credit. Plethora of Decisions relied upon by appellant In their submissions in this case, on Revenue Neutrality and on time limitation support their case. The Order-in-Original has rejected submission on Revenue neutrality with illogical, incorrect and unjustified observation that if argument of revenue neutrality as a permissible defence is accepted, entire scheme of payment of taxes on reverse charge basis will become irrelevant. However, the facts of payment of substantial amount of Excise duty from PLA during the period in question cannot be ignored, while considering revenue neutrality. Revenue has not adduced any evidence to show that appellant had not paid disputed Service Tax with intention to evade payment of Service Tax, when it was available as credit to appellant themselves under RCM. We also find force in the submissions of appellant on both these points. The demand of entire Service Tax is not sustainable on time limitation."

[Emphasis supplied]

11.2. A similar view has also been expressed by the Tribunal in the case of *M/s. Asmitha Microfin Ltd. v. Commissioner of Cus., C.Ex. & S.T., Hyderabad-III [2020 (33) G.S.T.L. 250 (Tri. – Hyd.)]*. The relevant portion of the said order is reproduced below: -

> *"6. However, we find that the demand is for the period April, 2009 to March, 2012 and the show cause notice was issued invoking extended period of limitation on 17-10-2014. The entire demand is under reverse charge mechanism and if the appellant had paid the service tax under reverse charge mechanism, they would have been entitled to Cenvat credit of exactly the same amounts. Therefore, the revenue neutrality in this case is evident. It has been well settled at the hands of the Apex Court in the case of Jet Airways (supra) that extended period of limitation cannot be invoked in revenue neutral cases. Therefore, the entire demand is hit by limitation and therefore needs to be set aside. The impugned order is set aside and the appeal is allowed."*
>
> [Emphasis supplied]

11.3. The above issue has also been examined in the case of *M/s. Jet Airways (I) Ltd. v. Commissioner of Service Tax, Mumbai [2016 (44) S.T.R. 465 (Tri. – Mum.)].* The relevant paragraph of the said order reads as follows: -

> *"10.4 In our considered view the appellant could have availed Cenvat credit of the service tax paid on reverse charge mechanism as they are liable to pay tax on output service hence, Revenue neutral situation arises wherein appellant pays the tax and takes the credit. We note that the issue as to confirmation of service tax liability arose on the payment made to CRS Company, as decided by majority decisions, in three cases namely British Airways, Thai International Public Co. Ltd. and Austrian Airways wherein the question of revenue neutrality arose, which was answered in favour of assesses therein. It is trait law that question of*

Revenue Neutrality is a good ground, more so when the tax liability is being discharged under reverse charge mechanism. This very plea of revenue neutrality in an identical issue was raised in British Airways case and decided also. It is settled law when an issue is raised and decided in a judgement, the ratio applies."

[Emphasis supplied]

11.4. We find that the ratio laid down in these case-laws is squarely applicable in the present case. Therefore, we set aside the confirmed demand of differential I.G.S.T.

12. As a result, we set aside the impugned order and allow the appeal filed by the appellant. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd